

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**DAVID D. WILBON, RICO M. WILBON,  
and GEORGE J. SMITH,**

**Plaintiffs,**

**V.**

**JOSEPH M. PLOVANICH, OFFICER  
MILLAN (Star # 6082), KEVIN A. GRANEY,  
ROBERT MANGAN, MICHAEL T.  
KARCZEWSKI, SARAH McDERMOTT,  
NOEL ESQUIVEL, ANTONIO J. VALENTIN,  
MARK A. KUSHINER, JORGE CERDA,  
ARMANDO SILVA, JR., RAFAEL S. GARCIA,  
J. J. GORZKOWSKI, UNKNOWN OFFICERS  
OF THE CHICAGO POLICE DEPARTMENT,  
and CITY OF CHICAGO,**

## Defendants.

[illegible]

**Case No. 12 C 1132**

**Magistrate Judge M. David Weisman**

**PLAINTIFFS' MOTION TO BAR DEFENDANTS FROM ASKING DAVID WILBON  
ABOUT ALLEGED SHOW-UP BECAUSE OF COURT'S PREVIOUS HEARSAY RULING**

Plaintiffs, DAVID. D. WILBON, RICO M. WILBON, and GEORGE J. SMITH, by and through their attorneys, Irene K. Dymkar, Torrey L. Hamilton, and Shamoyita M. DasGupta, hereby move this Court, bar defendants from asking David Wilbon about alleged show-up because of Court's previous hearsay ruling. In support thereof, plaintiffs state as follows:

1) The Court previously ruled that what witness Keith Thornton may have said at the time of an alleged show-up was hearsay and inadmissible. Doc. 458 at 34-37. The reasoning was that there was no testimony that what Thornton may have said was ever communicated to any of the arresting officers.

2) Defendants have indicated at the pre-trial conference on July 12, 2018, that they will elicit from David Wilbon testimony about a show-up. Specifically, David testified at deposition that two officers rode by in a squad car with no one else in the car. One of the officers shined a flashlight

at him and said “Yeah. That’s him.” There is no indication that any arresting officer saw or heard this.

3) In fact, no defendant officer in this case has ever testified that this happened. No defendant officer testified at deposition that a squad car rode by and one officer in the car said, “Yeah. That’s him.” No one has ever identified the two officers who may have driven by (without Keith Thornton in the car). No one has ever testified as to the basis of any knowledge of these unknown officers that David was “him.”

4) Thus, for the same reasons as the Court’s ruling with regard to Keith Thornton, any statements allegedly made by an unnamed, unknown officer that were not heard by an arresting officer cannot be used to justify the arrest. Any such statements are hearsay offered for the truth of the matter asserted and are inadmissible.

WHEREFORE plaintiffs, DAVID D. WILBON, RICO M. WILBON, and GEORGE J. SMITH, move the Court to bar defendants from asking David Wilbon about alleged show-up because of Court’s previous hearsay ruling.

Dated: July 15, 2018

/s/ Irene K. Dymkar  
Irene K. Dymkar

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